

Proposed Rule

A new Chapter to Article 69-09:

69-09-10

01. Definitions:

1. “Commercial wind energy conversion facility” means a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity.
2. “Commission” means the public service commission
3. “Wind turbine” means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity.

02. Cost Responsibility: The owner or operator of a commercial wind energy conversion facility is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

03. Useful Life: A commercial wind energy conversion facility or individual wind turbine is presumed to be at the end of its useful life if the facility or turbine generates no electricity for a continuous period of twelve (12) months. The presumption may be rebutted by submitting to the commission for approval a plan outlining the steps and schedule for returning the commercial wind energy conversion facility or wind turbine to service.

04. Decommissioning Period: The facility owner or operator shall begin decommissioning a commercial wind energy conversion facility or wind turbine within 8 months after the time the facility or turbine reaches the end of its useful life, as determined in (#3). Decommissioning must be completed within 18 months after the facility or turbine reaches the end of its useful life.

05. Decommissioning Requirements: Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four feet; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy conversion facility or wind turbine. To the extent possible, the site must be

restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.

06. Decommissioning Plan: Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file with the commission the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility or turbine and a decommissioning plan that describes how the facility or turbine owner or operator will ensure that resources are available to pay for decommissioning the facility or turbine at the appropriate time. The commission shall review a plan filed under this section and shall issue an order approving or disapproving the plan within 6 months after the decommissioning plan was filed. The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.

07. Existing Facilities: Owners and operators of existing commercial wind energy conversion facilities shall file with the commission the information required in section 6 within one year of the effective date of the rules.

08. Financial Assurance: After the 10th year of operation of a commercial wind energy conversion facility or wind turbine, the commission, by order, may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning the commercial wind energy conversion facility or turbine.

09. Failure to Decommission: If the commercial wind energy conversion facility owner or operator does not complete decommissioning, the commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a commercial wind energy conversion facility or wind turbine, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the commercial wind energy conversion facility.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27